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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Letter dated 23 September 1996 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith the official reply of the Government of the Republic of Iraq to the report on the situation of human rights in Iraq (E/CN.4/1996/61), submitted by the Special Rapporteur to the Commission on Human Rights at its fifty-second session.

I should be grateful if you would have the reply of the Government of the Republic of Iraq circulated as a document of the fifty-first session of the General Assembly under item 110 (c).

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

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Annex

The reply of the Government of the Republic of Iraq to the report of the Special Rapporteur (E/CN.4/1996/61)

Introduction

1. The Government of the Republic of Iraq has considered the report on the situation of human rights in Iraq submitted by Mr. Max van der Stoel to the Commission on Human Rights at its fifty-second session (E/CN.4/1996/61), and should like to put forward its observations on the claims and allegations contained therein. Before beginning our detailed reply to these claims, we should like to point out that the Special Rapporteur has nothing new to contribute: as in all his previous reports, he has relied on repetition, exaggeration, provocation and the circulation of dubious information drawn from unreliable and hostile sources. Van der Stoel has persisted in following highly inappropriate, hostile procedures and has been recklessly and deliberately critical of the Government of Iraq. He has paid no attention to the importance of ensuring the objectivity and non-selectivity of the consideration of human rights issues, as affirmed by the Vienna Declaration and Programme of Action. General Assembly resolution 50/174 also affirmed the importance of the objectivity, independence and discretion of the special rapporteurs and representatives on thematic issues and countries, as well as of the members of the working groups, in carrying out their mandates. Paragraph 6 of resolution 50/174 requests the special rapporteurs and representatives to take duly into account the contents of the resolution in carrying out their mandates. Nevertheless, despite all these affirmations, Van der Stoel evinces only his inveterate ill-will and his readiness to take every opportunity to indulge it. Therefore, at times he tracks down fallacies and slanders from elements working for hostile States and calling themselves "the Iraqi opposition", and reproduces them in United Nations documents, and at other times he submits a report to the Security Council in an attempt to confuse the records and the mandates of the various United Nations bodies. In fact, his real reasons for presenting such a report are political, and completely unrelated to human rights issues; rather, they are connected with the conspiracy to divide Iraq by imposing the no-fly zones in the north and the south of the country. In addition, he holds press conferences as part of the media onslaught on Iraq conducted by well-known parties.

2. The Government of the Republic of Iraq would like, in putting forward its reply to the report, to refer to the replies it has previously given as part of its commentary on the Special Rapporteur. In document A/46/647 of 1991, Iraq provided comprehensive replies to the Special Rapporteur's questions, and included a detailed description of the troubles which the three hostile States have heaped on Iraq, an explanation of the political structure of the country, the procedures employed by the Iraqi Government in dealing with the ethnic groups, and the facts regarding nutrition and health in Iraq. In documents A/C.3/47/2 of 1992 and A/48/875 of 1994, Iraq gave a detailed analysis of the security situation in the southern marsh area that disproved the allegations which the Special Rapporteur keeps repeating with regard to indiscriminate bombardments and the draining of the marshes. The documents also clarified

Iraq's position with respect to the proposal to station human rights monitors in Iraq. The reply described the situation of the civil, political, economic, social and cultural rights of the inhabitants of the region, and gave details of the advantages realized for those inhabitants by the Saddam river project. Further, details were given of conditions prevailing in the northern part of the country and what have been described as the exceptional circumstances obtaining in the region as a result of the military intervention of the allied forces and the establishment of the no-fly zones.

3. In 1994, Iraq submitted a reply in document A/49/394 that refuted all the allegations made by Van der Stoel with regard to executions, arrests and detention, torture, freedom of expression and movement, the right to nationality and property and access to health care. It also refuted the allegations made in Van der Stoel's report with regard to violations affecting the Kurds, the Shiah, the Marsh Arabs, the Turkomans and the Assyrians. Finally, it discussed the nature of State and individual responsibility and the political and legal system in Iraq.

4. In documents E/CN.4/1995/138, A/50/471 and E/CN.4/1996/119, the Government of Iraq has set out its position with respect to the question of Kuwaiti missing persons, a question that the Special Rapporteur has taken upon himself to raise - thereby exceeding his mandate - with a view to achieving the political goal of prolonging the sanctions on Iraq. The documents also detail the advantages of the Saddam river project in the marsh area, and explain the reasons for the imposition of some of the severe punitive measures of a preventive and temporary nature dictated by the difficult conditions experienced by Iraq as a result of the economic sanctions imposed on it. In addition, the documents cover the general amnesty declared in 1995, which commuted death sentences and halted the imposition of the severe punitive measures.

5. The aforementioned documents also refute the allegations made by the Special Rapporteur with regard to the responsibility borne by the Government of the Republic of Iraq for the killings that have taken place in the northern region, which lies outside State administration owing to the intervention there of the allied forces.

6. Finally, the documents refute Van der Stoel's allegations that the Government of Iraq is responsible for the suffering of the Iraqi people due to the lack of foodstuffs and medical supplies, whereas responsibility lies with certain States that have promoted the adoption of resolutions which infringe the independence and sovereignty of Iraq.

The legal framework

7. In paragraph 12 of his report (E/CN.4/1996/61), Van der Stoel claims that there are no special circumstances which Iraq may invoke by way of permissible excuses under international law. In this paragraph, Van der Stoel betrays his intentions and his established bad faith: how otherwise can these claims that there are no special circumstances in Iraq be interpreted, when he knows perfectly well that Iraq has been facing a hostile situation and experiencing unrest, quite apart from having to endure gross violations of its sovereignty and territorial integrity due to the imposition by certain of the allied States

of the no-fly zones in the north and south of Iraq, and direct military intervention? Furthermore, Iraq has been suffering the oppression of unjust sanctions for six years, the evil effects of which have been felt in every sphere, and which have brought about conditions previously unknown in the history of Iraqi society. Iraq has detailed the effects of the embargo in its reply to each of Van der Stoel's reports, in the periodic reports it submits to the human rights treaty bodies and at every international gathering in which Iraq has taken part since 1990. Van der Stoel deliberately ignores the difficult circumstances endured by the Iraqi people and does not even trouble himself to give careful attention to the replies and explanations submitted by Iraq, or to the publications of the relevant international organizations, all of which have testified to the harsh conditions endured by the Iraqi people as a consequence of the embargo.

8. In paragraph 13 of his report, Van der Stoel claims that the Government of Iraq withdrew its administration from the north of Iraq subsequent to the armed intervention of the allied forces of certain States, and disclaimed responsibility in the region although no other State is any longer occupying the territory. We would like to stress that the Government of Iraq did not and will not disclaim responsibility for any part of its territory, and attaches great importance to the territorial and regional integrity of Iraq. However, the truth of the matter is that the Government of Iraq was forced to withdraw its administration subsequent to the military intervention of the allied forces, which continues to this day. This has led to direct and repeated military intervention by Iran and Turkey.

I. THE POLITICO-LEGAL ORDER OF REPRESSION

9. The Government of Iraq has not, in the course of its perusal of the section entitled "The politico-legal order of repression", discerned anything new in all the specious claims and allegations it contains, which have merely been reproduced from earlier reports. We see no reason to reiterate our replies, but would like to draw the Special Rapporteur's attention to the fact that his arguments lack fairness and objectivity when he claims that there has been no change or improvement worth mentioning in the general human rights situation in Iraq. He repeats his previous claims regarding the continuing imposition of severe punitive measures and questions the general amnesty declared in Decrees Nos. 61 and 64 of 1995, pursuant to which all prisoners and detainees were released, death sentences were commuted and the amputation of hands was no longer performed. In accordance with the Revolution Command Council Decree No. 81 of 1996, branding and amputation of the ears was halted.

10. Van der Stoel makes no reference to the constitutional amendment concerning the office of President of the Republic, which stipulated that candidacies for this office must be submitted to a popular referendum, or to the other democratic procedures that have been taken in Iraq recently, such as the elections held for the National Council and the Local People's Councils (see document E/CN.4/1996/119). On the contrary, he suspects and gives the worst interpretation to any positive step that has been taken by the Government of Iraq in order to strengthen the democratic process in the country.

11. Beginning with his first report, Van der Stoel has deliberately repeated the same allegations with regard to the structure of power in Iraq, claiming that the Revolution Command Council has wide-ranging jurisdiction, and that enormous power is concentrated in extremely few hands, with ultimate power vested in the person of the President of the Republic. This claim is both absurd and untrue, since the work and the responsibilities of the Revolution Command Council are laid down in articles 37 (a), 52 and 53 of the Constitution.

12. Similarly, the work and responsibilities of the National Council are regulated by the National Council Act No. 26 of 1995. The Council of Ministers Act No. 20 of 1991 gives clear and strictly defined powers to the Council of Ministers.

13. In this regard, and in order to avoid unwarranted repetition, we would like to refer to our detailed reply in documents A/46/647 and A/50/471.

A. Violations of civil rights

14. With reference to paragraph 18 of the report, which Van der Stoel begins by claiming yet again that "the politico-legal structure of the Republic of Iraq has not changed in the past year", it would appear that he is calling for change in the system of government in Iraq. This is blatant and completely unwarranted interference, which we reject, in the internal affairs of Iraq, in addition to being outside the mandate that he was given by the Commission on Human Rights resolution 1991/74, which did not authorize him to make such calls. By doing so, he is abusing the powers invested in him by the aforementioned resolution, and confirming what we have said on previous occasions regarding his association with plans made by States and parties hostile to Iraq with a view to changing Iraq's national structure, fragmenting its territory and partitioning its people, thereby violating the right of peoples to freely determine their political status in accordance with article 1 of the International Covenant on Civil and Political Rights.

15. In article 19 of his report, Van der Stoel alleges that extrajudicial killings and executions have been reported in relation with military operations, as have indiscriminate shelling in the southern marsh area in Maysan and Basra Governorates and shelling in the northern part of Iraq. The Government of the Republic of Iraq wishes to note here that Van der Stoel is unable to produce specific cases of the killings to which he refers, or to say where they took place, under what circumstances or who was killed. These claims cannot therefore be considered other than as specious reports which bear absolutely no relation to the facts.

16. With respect to the allegations that executions took place during military operations in the southern marsh area and that certain villages were subject to shelling, the truth is that there were some sporadic cases of self-defence when criminals and elements encouraged by the Iranian regime in this area undertook hostile acts against citizens or the government apparatus. There is no truth whatsoever in the allegations of executions. As for the civilian villages in the southern marsh area, the relevant authorities have no record of any

bombardment having been undertaken against villages or residential communities in the aforementioned areas.

17. We should like to draw the Special Rapporteur's attention to the fact that the Darman region in the north of Iraq forms part of the territory administered by the State, and Van der Stoel's allegations concerning assaults on these villages are clearly untrue, since the inhabitants of this region conduct their daily affairs, such as herding animals, and agricultural and other economic activities, perfectly normally.

18. Concerning the district of Chamchamel, Iraqi military divisions have no record of any shelling having taken place in the area. The fact is that certain elements encouraged by Iran instigate occasional disturbances and killings in this district, particularly when it comes to their attention that delegations representing the United Nations, which may be exploited for propaganda purposes, are in the area, and in an attempt to portray the military as carrying out random bombardments. Nevertheless, the army does not return fire, out of concern for the safety of innocent citizens. Here we would like to mention an event that took place sometime between 1994 and the beginning of 1995, when the traitor called Jalal Talabani induced certain elements to oppose Iraqi military units. The latter dealt with the situation very calmly, as a result of which the Turkish Government issued an official statement thanking the Iraqi Government for its policy of self-control and the wise approach it had adopted in dealing with the situation, and condemning the stance of Jalal Talabani.

19. The Government of Iraq considers it necessary to note that this region has gone through various stages since 1991, that is, in the absence of national authority and the rule of law. These have included repeated Iranian violations, the most recent of which was the fighting that broke out in the middle of August 1996, accompanied by bloody events that led to the deaths of hundreds of our Kurdish people and the destruction of towns, villages and property. Other regional violations and acts of terrorism have been perpetrated by elements incited by Iran.

20. These violations would not have taken place had it not been for the blatant intervention of foreign and regional States, and primarily the United States, which is relentless in its hostile course of intervention in the internal affairs of Iraq with a view to injuring its people and obstructing its development.

21. This abnormal situation, imposed by the United States and certain of its allies, has opened the door to the expansionist ambitions of the Iranian regime in the area. During the clashes that took place in August 1996, the Iranian regime intervened in the northern part of Iraq and encouraged individual elements of the Iranian armed forces and the guards of the Iranian regime to cross the national borders in the region and support the traitor Jalal Talabani in his fight against our Kurdish people, using heavy artillery and missiles to bombard towns and villages. This drove the Kurdish people to seek support from the Iraqi Government in order to bring a halt to these violations. The fact that our Kurdish people sought help from its national Government in order to end its suffering exposes the persistent claims of the Special Rapporteur and certain of the allied States, principally the United States, that their military

intervention in the northern part of Iraq was intended to protect the Kurds, and supports our previous assertions, namely, that the secret but true intention behind that intervention is to tear apart Iraq and fragment its territorial integrity. Accordingly, ever since 1991 we have seen the United States obstructing any national dialogue between the Kurds and the national Government, in a manner incompatible with the right of our Kurdish people to practise democracy and to express its opinion independent of external pressures, thereby affirming the unity and cohesion of the Iraqi people, both Arab and Kurd.

22. With regard to the claims made in paragraph 20 of the report concerning the execution of Kazem Rida Ali Al-Hakim, from the city of Karbala, and of Haidar Sayyid Amr and Sabah Nuri Shukr, we should like to point out that the person called Kazem Rida Ali Al-Hakim had taken part in the uprisings fomented by those behind the 30-Power aggression, and had presided over the so-called court held by those elements at the mausoleum of Al-Husayn in Karbala Governorate. He himself carried out death sentences on citizens Abd Al-Sattar Khudayr and Naji Ghazi. When the disturbances were over, relatives of those citizens laid charges against him, and the proper legal measures were taken. In view of the crimes he had committed, he was sentenced to death, and the provisions of the law were applied, since he was not eligible for the amnesties that were declared after the disturbances, which excluded those guilty of deliberate murder and rape.

23. The person called Sabah Nuri Shukr took part in the uprisings and killed the citizen Abd Al-Sattar Hasan Muhammad in the region of Hindiyah in Karbala Governorate. The latter's relatives brought charges against him, and his case was considered. A death sentence was passed in accordance with the provisions of the law. It is not true that explosives were placed inside his body. There is no information about the person called Haidar Sayyid Amr.

24. Van der Stoel claims in paragraph 22 that the death penalty was applied against persons convicted for small crimes such as pickpocketing or illegally exchanging money. This accusation is a distortion of the facts and a completely unfounded lie. Death sentences have not been carried out for unofficial foreign currency exchange dealings, since the legal measures taken against the perpetrators of such crimes are in accordance with the provisions of the law of the Iraqi Central Bank, namely, imprisonment with or without a fine. Therefore, pursuant to the amnesties, the most recent of which was on 23 July 1995, such criminals have been released after serving their sentences.

25. In paragraph 25 of the report it is stated that imams from mosques had been arrested and executed. These are empty and tendentious claims whereby Van der Stoel aims to stir up sectarian sensitivities and international public opinion. The Government of Iraq is very concerned to protect the freedom to perform religious ceremonies and to care for prayer halls and mosques.

26. The Special Rapporteur alleges in paragraph 27 of the report that the Security Services are still preoccupied with arresting those who participated in the uprisings that took place in 1991. We stress that this claim is untrue, since Revolution Command Council Decision No. 109 of 1991 pardoned all those who took part in these events, with the exception of those who had committed the crimes of murder and rape. This decision also gave those people, whether they

were inside or outside of Iraq, the opportunity to return and live a normal life with their families.

27. The claims made in paragraph 28 regarding the detention and torture of persons are empty, groundless and generalized. They are unsupported by any proof, and Van der Stoel does not identify any specific case that is corroborated.

28. In paragraph 29 of the report, Van der Stoel insists that severe penalties such as branding and amputation of the hand and the ears continue to be enforced. Here, we would like to reaffirm what we stated in our reply contained in document E/CN.4/1996/119, namely, that in accordance with Amnesty Decree No. 61 of 1995, amputation of the hand was discontinued. Amputation of the ears and branding was discontinued pursuant to Revolution Command Council Decree No. 81 of 1996. Iraq has already given the Centre for Human Rights details of these decrees, but Mr. van der Stoel does not concern himself with following up on the matter. (The text of Decree No. 81 is enclosed herewith.)

29. With reference to the numbers given in paragraph 30 of those who Van der Stoel claims have disappeared in Iraq, including Kuwaitis, we should like to note that this large number is hugely exaggerated. We have made our position on this matter clear in all our previous replies, and those may be consulted. Since Van der Stoel persists in raising the question of missing persons, we should like to point out that Iraq cooperates in this regard with the Technical Subcommittee of the Tripartite Commission, in order to investigate the fate of those who have disappeared. We should also like to point out that the Special Rapporteur, along with other parties, is doing his best to exploit and politicize this humanitarian issue, in order to damage Iraq's international reputation. Despite the claims he has made at every opportunity to the effect that Iraq has no interest in proceeding with this insoluble problem, it is, on the contrary, in Iraq's interests to clear up the matter, in order to eliminate all the pretexts employed by hostile parties with a view to prolonging the suffering of the Iraqi people (see document E/CN.4/1996/119).

B. Access to food and health care

30. In this part of his report, the Special Rapporteur alleges that there is discrimination on a regular basis in the distribution of food and medical items. In that respect, we affirm our earlier statement that the Government of Iraq has employed the ration card system since imposition of the economic embargo against Iraq in 1990. Under that system, every Iraqi citizen receives certain food items on an equal basis without discrimination. The system was commended by the various United Nations missions which visited Iraq with a view to ascertaining living conditions, a commendation which they confirmed in their reports to the Organization. If the system were as described by Van der Stoel, it would not have been approved by the United Nations in the Memorandum of Understanding concluded within the framework of implementing Security Council resolution 986 (1995).

31. In that connection, we wish to point out that the Memorandum of Understanding concluded with the United Nations Secretariat in the context of

implementing the formula permitting the sale of oil for food, medicine and other humanitarian supplies, which allows the export of Iraqi oil worth US$ 2 billion, materialized six months after negotiations began, a period equal to that prescribed for implementation of the agreement and for the Iraqi people to benefit from the arrival of those essential items. This was due to the constant interventions and intransigence of the United States Administration, as well as to procrastination, delay and deliberate unjustified stalling, which fostered political designs and plans aimed at further ruining the lives of the Iraqi people.

Its attempt to impede the Memorandum of Understanding signed between Iraq and the United Nations following the military missile attack launched on 3 and 4 September 1996 will also inevitably increase the suffering of the Iraqi people on account of the continuation of the embargo against it for more than six years. That attempt unquestionably exposes the spuriousness of the claims circulated by the Special Rapporteur that Iraq does not wish to benefit from the formula of "oil for food and medicine". It also affirms our earlier contentions concerning United States attempts to place obstacles in the way of implementation of the Memorandum of Understanding. The United States therefore bears full responsibility for the suffering of the Iraqi people by insisting on continuation of the economic embargo.

The Government of Iraq will submit to the General Assembly at its fifty-first session a detailed study, which may be consulted, on the effects of the economic embargo on the people of Iraq.

C. The referendum of 15 October 1995

32. In this part of his report, the Special Rapporteur criticizes the national referendum held on 15 October 1995 concerning the office of President of the Republic, alleging that the referendum was neither free nor an expression of the genuine will of the people and that various individuals were arrested on account of their opposition to the referendum. He further alleges that the process was subject to monitoring by the security forces, that the ballot cards were designed in such a way as to facilitate monitoring and that military forces engaged in operations to close the road leading to the southern governorates.

33. Inasmuch as it is pure fabrication and lies, this part of the report also demonstrates the frustration, bad faith and deliberate scepticism of the Special Rapporteur. The general referendum on the office of President of the Republic, held on 15 October 1995, was witnessed by hundreds of Arab and foreign journalists, correspondents and members of parliament, who ascertained through their field observations that the process was free and impartial and was conducted under democratic conditions without any of the pressures alleged by Van der Stoel. It was then followed by elections to the National Assembly on 24 March 1996 and to local people's assemblies on 30 and 31 May 1996, which were also conducted under the same conditions.

34. Here, it should be pointed out that we have frequently been aware of Van der Stoel's biased interpretation and scepticism concerning the positive steps taken by the Government of Iraq, the aim being to give international

bodies the impression that constitutional legitimacy and sovereignty of law are lacking.

35. As for Van der Stoel's criticisms of the ballot cards, we wish to make it clear that the cards distributed were voting entitlement cards. These are cards which were distributed to citizens in timely fashion before the referendum with a view to easier notification concerning the location of polling stations where the referendum was to take place and ensuring maximum possible precision. Together with a number of civil servants, a judge from the Ministry of Justice was assigned to each polling station in order to expedite the ballot process and direct citizens to the designated locations.

36. It is completely untrue that military units were dispatched to the southern region during the referendum; no unusual movements were experienced by that region either before or after the referendum. Reference may be made to document E/CN.4/1996/119, in which the Government of Iraq explains the leadership's planned approach to strengthening democracy and human rights in Iraq.

II. CONCLUSIONS

1. From a study of the report, it is clear that it contains vague generalities obtained from hostile and biased media or from sources which are well known for their calculated hostility to Iraq and which have adopted positions aimed at sullying Iraq's reputation, as illustrated by paragraphs 15 to 18 and 22 to 28.

2. Van der Stoel has failed to maintain the minimum of impartiality and objectivity required in such reports. On the contrary, he exhibits blatant prejudice and ill intentions calculated to cause damage and harm to Iraq in response to the wishes of other parties hostile to Iraq with a view to interfering in its internal affairs, fragmenting its national unity and dividing its people.

3. Van der Stoel has deliberately ignored the replies and clarifications provided by the Government of Iraq in connection with his allegations, the intention being to conceal the facts and mislead international human rights organizations.

4. Van der Stoel attempts to invoke the issue of missing Kuwaitis for obvious political purposes unrelated to human rights with a view to the continued exercise of pressure on the Government of Iraq and prolongation of the economic embargo and hence the suffering of the Iraqi people.

5. With respect to the right to food and health care, we refer to the Memorandum of Understanding with the United Nations Secretariat in the context of implementing the formula of 'oil for food, medicine and other essential supplies'. It must be pointed out that the negative positions of the United States Administration, intended to delay agreement under the Memorandum of Understanding for a period longer than that prescribed for benefiting from it, coupled with its attempt to impede implementation of the Memorandum following the military missile attack launched on 3 and 4 September 1996, confirm that the prolonged suffering of the Iraqi people is the responsibility of the United States, which boasts of its concern for human rights and peoples' suffering, at a time when the Government of Iraq demonstrated full and serious cooperation and compliance with a view to the achievement and implementation of that agreement.

6. Van der Stoel's false analysis of the power structure in Iraq and his irrational criticisms concerning the referendum are beyond his mandate. Iraq is a country of institutions which operate within the framework of the Constitution and the laws in force. The legislative, executive and judicial authorities duly perform their work in the normal manner. Van der Stoel's pretension corroborates his role in the malicious slur campaigns against Iraq. The results of the referendum, which, as attested by Arab and foreign observers and correspondents, was impartial, free and democratic, belie the assumptions of Van der Stoel and the circles on whose account he works.

Appendix

REPUBLIC OF IRAQ

REVOLUTION COMMAND COUNCIL

Decree No. 81 of 21 Rabi' I A.H. 1417 (5 August A.D. 1996)

Decree

Pursuant to the provisions of article 42 (a) of the Constitution,

The Revolution Command Council has decreed as follows:

1. Paragraphs 1, 2 and 3 of Revolution Command Council Decree No. 115 of 25 August 1994 shall cease to have force;

2. This Decree shall take effect from the date of its promulgation in the Official Gazette.

Saddam Hussein
Chairman
Revolution Command Council